IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 26377 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SUMANADEEP CHARITABLE TRUST - Petitioner(s)
Versus
STATE OF GUJARAT NOTICE TOBE SERVED UPON - Respondent(s)

==========

Appearance :
MR MITUL K SHELAT for Petitioner(s) : 1,
MS ARCHANA RAWAL, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 01/05/2007

ORAL JUDGMENT

1. In light of the view that the Court is inclined to adopt, the petition is taken up for final hearing and disposal. Rule. The learned AGP appearing on behalf of respondent-authority is directed to waive service.

2. This petition under Article 226 of the Constitution challenges the decision dated 27.11.2006 of respondent-authority refusing to grant Essentiality Certificate and further calling upon the petitioner to fulfill six requirements enumerated in the communication dated 27.11.2006. The petitioner has prayed for following reliefs:

> *“6. The petitioner therefore prays that;*
>
> *A The Hon'ble Court be pleased to quash and set-aside the impugned decision dated 27/11/2006 and thereupon be pleased to issue an appropriate writ, order or direction commanding the respondent to grant the Essentiality Certificate in favour of the petitioner for its proposed*

dental college with an intake capacity of 100 seats.

B Pending admission and final hearing of the present petition, the Hon'ble Court may be pleased to direct the respondent to place on record the relevant files pertaining to the decision impugned in the present proceeding.

C The Hon'ble Court be pleased to grant any other and further relief as may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice".

3. The petitioner, a public charitable trust, is desirous of starting a Dental College with intake capacity of 100 seats. As per provisions of the Dental Act, 1948 no person can establish a Dental College or conduct a course of study or training except with prior permission of the Central Government obtained under the provisions of the Act. Hence, every person desirous of set-up Dental College is required to apply to the Central Government along with a scheme in accordance with provisions of the

Act and the Central Government, in turn, makes a reference to the Dental Council of India, established under the Act, to make recommendation to the Central Government under Section 20 of the Act, the Dental Council of India is entitled to frame regulations.

4. The Dental Council of India (the Council) has accordingly framed regulations from time to time and the prevalent regulations are called “The Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental College) Regulations 2006” (the Regulations). The Regulations prescribed the mode and manner of moving an application before the Central Government accompanied by various documents. One such document being an Essentiality Certificate which is required to be issued in Form-4 by the State Government or the Union Territory Administration as the case may be.

5. Admittedly, on 30.05.2005, the petitioner requested the respondent-authority to issue an Essentiality Certificate. The petitioner was called

upon by the respondent-Authority to submit further documents which were supplied on 21.06.2005. Thereafter, the respondent-authority informed the petitioner vide communication dated 01.08.2005 that an Inspection Team of the State Government shall be visiting the site of the proposed Dental College on 02.08.2005. After the inspection took place on 02.08.2005, as the petitioner did not heard from the respondent-authority on 21.11.2006, the petitioner called upon the respondent-authority to inform as to what is happened to the application for grant of Essentiality Certificate. The respondent-authority responded vide communication dated 27.11.2006.

6. The learned advocate for the petitioner has submitted that the impugned communication / order dated 27.11.2006 is erroneous and bad in law as the respondent-authority is not entitled to call for the various details listed in communication dated 27.11.2006. It was submitted that the six requirements enumerated in the impugned communication have no relevance with the granting of Essentiality Certificate as required by the Regulations and

therefore, the Authority may be directed to issue Essentiality Certificate. Reliance was placed on the Apex Court decision in case of *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust V/s. State of Tamil Nadu & Ors.* (1996) 3 SCC 15 with special reference to paragraph No.34 of the Judgment to submit that the Essentiality Certificate is only in relation to desirability and feasibility of having the proposed Dental College at the proposed location and cannot be equated with obtaining prior permission of the State Government for establishing a new Dental College. That the said decision was in relation to establishment of a new Medical College but the concept of an Essentiality Certificate would remain the same.

7. As against that the learned AGP places reliance on the fact that the inspection team which is established under Resolution dated 31st July, 1997 of the State Government as in its report dated 23rd November, 2005 unanimously opines that Essentiality Certificate to the proposed Dental College may not be

issued. That the Inspection Report dated 23rd November, 2005 which is available at Annexure-R-III annexed to the affidavit-in-reply shows that there were various deficiencies, which would not permit issuance of an Essentiality Certificate. Attention was also invited to Regulation No.6(2)(b) as well as Regulation No.6(2)(e) of the Regulations read with proforma Form No.4 to submit that the respondent-authority was required to give full justification for opening of the proposed College as laid down in column No.10 of Form No.4, and therefore, was still within its right to call for various details enumerated in communication dated 27.11.2006. Further more, inviting attention to the last paragraph of the Certificate which reads as under:

> *"It is further certified that in case the applicant fails to create infrastructure for the dental college as per Dental Council of India norms and fresh admissions are stopped by the Dental Council of India, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government".*

8. It was submitted that when the State Government was required to certify that the State Government would take over the responsibility of the students already admitted in the College with the permission of the State Government, the State Government was entitled to specify itself that the petitioner had a requisite means of an infrastructural facilities to ensure that the petitioner-Institution would be in a position to discharge its liability towards students and the State Government is not called upon to absorb the students or undertake the responsibility of the students. It was, therefore, urged that no interference was warranted in the facts and circumstances of the case.

9. As can be seen from the impugned communication dated 27.11.2006, the said communication falls in two parts: the first part states that in light of Inspection Report of the Inspection Committee as the following requirements are not fulfilled, the application made by the petitioner to issue an Essentiality Certificate is

rejected; the second part enumerates six items and it is further stated that upon fulfillment of the said deficiencies the Authority may consider the application of the petitioner. The six requirements enumerated are;

1) Hostel facilities as prescribed by Dental Council of India are not available;

2) No objection Certificate from Gujarat University has been obtained but affiliation has not be obtained;

3) Adequate number of Dental chairs and units are not available at the Dental Hospital.

4) The Institution does not have adequate number of equipments and instruments.

5) The Institution does not have the necessary books and journals as per norms of Dental Council of India, and;

6) The Institution does not have necessary teaching staff, non-teaching para-medical staff and non-teaching administrative staff.

10 In this context, a question would arise as to whether the aforesaid deficiencies can be termed to be deficiencies relevant at the stage of issuance of an Essentiality Certificate. Under regulation No.6 eligibility and qualifying the criteria have been prescribed. Sub regulation (1) of regulation No.6 enumerates organizations who shall be eligible to apply for permission of the Central Government to set-up a dental college. Sub regulation (2) of the regulation No.6 talks of the conditions which are required to be fulfilled for qualifying to apply for permission to establish a Dental College. In other words, an organization which is eligible to apply under sub regulation (1), as to fulfill conditions (a to k) laid down under sub regulation (2) of regulation No.6 or qualifying to make an application. An Essentiality Certificate in form No.4 is part of condition No.(e) of sub regulation (2) of regulation 6 and the said clause reads as under:

> *"(e) an Essentiality Certificate in Form 4, as annexed, regarding No Objection of the State Government or Union Territory*

administration for the establishment of the proposed dental college at the proposed site and availability of adequate clinical material as per the Council's regulations have been obtained by the applicant from the concerned State Government or Union Territory administration".

11 On a plain reading the said clause requires the State Government to issue a No Objection Certificate for the establishment of the proposed Dental College at the proposed site and availability of adequate clinical material as per the Council's regulations. The Essentiality Certificate has to be issued in prescribed form No.4 which reads as under:-

FORM -4

[See Regulation 6(2)(e)]

Subject : ESSENTIALITY CERTIFICATE

No.....
Government of .....
Department of Health Dated,
the.....

To

The

(applicant)

Sir,

The desired certificate is as follows:-

(1) No.of Institutions already existing in the State.

(2) No. of seats available or No. of dental surgeons being produced annually.

(3) No. of dental surgeons registered with the State Dental Council.

(4) No. of dental surgeons in Government service.

(5) No. of Government posts vacant and those in rural / difficult areas.

(6) No. of dental surgeons registered with Employment Exchange

(7) Dental Surgeon population ratio in the State.

(8) How the establishment of the college would resolve the problem of deficiencies of qualified dental personnel in the State and improve the availability of such dental manpower in the State.

(9) The restrictions imposed by the State Government, if any, on students who are not domiciled in the State from

obtaining admissions in the State, be specified.

(10) Full justification for opening of the proposed college.

(11) Dental Surgeon-Patient ratio proposed to be achieved.

(12) Copy of the Inspection Report in connection with the Inspection carried out by the State Government for grant of permission for setting up a new dental College is to be attached.

The (Name of the person) _____has applied for establishment of a dental college at _____On careful consideration of the proposal, the Government of _____has decided to issue an essentially certificate to the applicant for the establishment of a dental college with _____(no.) seats.

It is certified that:-

(a) The applicant owns and manges a _____bedded hospital which was established in _____

or

The proposed Dental College is located in the proximity of _____ Medical College

recognised by MCI and has also obtained an undertaking from the said Medical College that would facilitate training to the students of the proposed Dental College in the subject of Medicine, Surgery and Allied Medical Sciences.

Since no Medical College is available in the proximity of the proposed Dental College, the proposed Dental College has got itself tied up for _____ years with a Government General Hospital (_____) which is having provision for _____ beds and which is located within 10 K.M. of radius of the proposed Dental College till they have their own hospital in the same premises. It shall be the duty of the applicant to produce evidence that the infrastructural facilities such as teaching, pre-clinical, para-medical and allied medical sciences are owned by the proposed Dental College itself.

(b) The applicant owns and manages a dental clinic with _____ chairs,

(c) It is desirable to establish a dental college in the public interest;

(d) Minimum 30 Out Door Dental patients per day are available to begin with.

(e) The credibility and the financial status of the applicant has been verified.

It is further certified that in case the applicant fails to create infrastructure for the dental college as per Dental Council of India norms and fresh admissions are stopped by the Dental Council of India, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government.

12 Various claims prescribed in form No.4 go to show that the Essentiality Certificate primarily relates to a need or the necessity of setting up the proposed Dental College at the proposed locations in the State. The involvement of the State Government is primarily to ensure that there is no lop sided establishment of Dental Colleges that concentration in a particular area, coupled with the total requirement of number of Dental Surgeons in State

with reference to and in proposition to the total population of the State. This becomes abundantly clear when one considers the use of the phrase "*availability of adequate clinical material*" employed by clause (e) of sub regulation (2) of regulation No.6. The learned AGP has very fairly pointed out that the term clinical material as a technical connotation in so far as in relation to field of medicine, including dental, is considered. In simple terms it only refers to availability of adequate number of patients who can be treated by the students of the proposed Dental College. Therefore, the emphasis in form No.4 qua the number of existing hospitals in the proximity of the proposed Dental College. The form has also prescribed the area from the proposed Dental College within which the proposed Dental College can attach itself either with existing hospital or have an existing hospital of its own for the purposes of ensuring availability of adequate clinical material.

13 In the circumstances, it is apparent that the impugned communication has failed to take into

consideration the requirement of clause (e) of sub regulation (2) of regulation 6 of the regulations and the prescribed form of Form No.4 while rejecting the application made by the petitioner. At this stage, it is necessary to record and take note of the fact that in the impugned communication dated 27.11.2006, the respondent-Authority, while rejecting the application to grant Essentiality Certificate has referred to and relied upon the Inspection Report and the reasons stated therein but none of the reasons stated in the Inspection Report have been even summarized in the impugned communication / order, nor is it the case of the respondent-authority that the Inspection Report was furnished to the petitioner-Institution to meet with the reasons recorded in the Inspection Report.

14 In so far as the second part of the communication / order dated 27.11.2006 is concerned wherein the respondent-authority has made a requisitions of six enumerated items suffice it to state that the said requisitions, prima-facie, is not germane to the grant of an Essentiality Certificate

as required by regulation No. 6(2)(e) and prescribed Form No.4.

15 However, if the last paragraph of form No.4 and which reliance was placed by respondent-authority was taking into consideration, the respondent-authority will have to establish that the recommendation of six enumerated items and reliefs for the purpose of issuance of the certificate in the prescribed format. Admittedly, the impugned communication was not even refer to either the said paragraph of Form No.4 or the provisions of regulation 6(2)(e) of the Regulations. Hence, the impugned communication dated 27.11.2006 cannot be permitted to stand and operate.

16 Though, the communication does not refer to any other regulations or requirement of any statutory provision in the affidavit-in-reply, the respondent-authority has referred to regulation 6(2)(b) of the regulation to submit that the applicant as to show that the applicant has a feasible and time bound programme to set-up the proposed Dental College along

with the required infrastructure facilities in respect of buildings including adequate hostel facilities for boys and girls as prescribed by the Dental Council of India, Dental and allied equipment, faculty and staff commensurate with the proposed intake of students, so as to complete the dental college within a period of four years from the date of the grant of permission in support of the impugned communication. Suffice it to state that the respondent-authority has failed to distinguish from the Central Government and the Council. When the regulation talks of an applicant it talks of an applicant who moves the application before the Central Government to set out a Dental College as per regulation No.6 of the regulations. It does not talk of the applicant to the State Government seeking grant of Essentiality Certificate. Further more, regulation No.6(2)(b) specifically provides that the various facilities listed therein have to be completed within a period of four years from the date of grant of permission. Hence, on this count also the student of the respondent-authority is not warranted and the respondent-authority has erred in reading the

requirement of regulation 6(2)(b) of the regulations as being a pre-requisite conditions before an Essentiality Certificate can be issued.

17 In the aforestated facts and circumstances of the case, the impugned communication dated 27.11.2006 is hereby quashed and set aside. The application moved by the petitioner-Trust for grant of Essentiality Certificate shall be processed by the respondent-authority from the stage at which the communication dated 27.11.2006 was issued, and while processing the application, the respondent-authority was bear in mind what is stated herein before.

18 The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

(D.A.MEHTA, J.)

ashish//